

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3922 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
PRABHATSINGH S JADEJA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR MD RANA for Petitioner

MR KAMAL MEHTA, AGP for Respondent No. 1, 2

-----  
CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 24/12/96

ORAL JUDGEMENT

The petitioner, by this petition, has challenged letter dated 30th December 1982 (Annexure 'A') whereby he has been denied deemed date of promotion to the post of Deputy Mamlatdar.

2. The petitioner is a retired Circle Officer. He retired from service on or about 31.1.1981. It is contended by the petitioner, that he was initially

appointed as a Ledger Clerk in the year 1946 during the old State of Jamnagar; that the Ledger Clerk was copnsidered equal to Clerk and the cadre was the same; that the Ledger Clerks were getting the same pay and promotion and advantage just as other Clerks were getting; that the petitioner was promoted to the post of Circle Inspector on and from 28th September 1984 and he worked as such till 1975; that from 1975 onwards till his retirement, he worked as Circle Officer in the payscale of Rs.425-800; that from 22nd July 1948 to 17th September 1948, he undertook the responsibility of the post of Talati by the order of the authority; that the petitioner made a representation on 3.5.1979 to grant him deemed date of promotion to the post of Deputy Mamlatdar, but by the order at Annexure 'A', the same was turned down on the ground that the petitioner cannot be granted the deemed date as he has not passed the sub-service Departmental examination, and on the ground that in the year 1948, he was in the cadre of Talati.

3. From the letter at Annexure 'A', it appears that the petitioner was also informed that as per the recruitment rules, the petitioner was not entitled at the relevant time promotion to the post of Deputy Mamlatdar. Aggrieved by the aforesaid letter at Annexure 'A', the petitioner also preferred an appeal to the Revenue Department, which has also been rejected, vide Annexure 'B'.

4. Learned Advocate contended before us that juniors to the petitioner have been promoted, but the petitioner has been denied the benefit, inspite of pointing out to the concerned authorities that he is entitled to get promotion. The petitioner has relied on Annexure 'D' wherein it is pointed that non-matriculate Clerks serving in the Revenue Department were deprived of promotions to the post of Deputy Mamlatdars, and for getting promotions, passing of the examination was not a condition precedent under the Recruitment Rules of 1956 framed under the Saurashtra Civil Services Classification and Recruitment Rules. Mr. Rana submitted that as stated in Annexure 'D', even if the Clerk is non-matriculate and has not passed the examination conducted by the Revenue Department, that itself is not a sufficient ground not to promote to the post of Deputy Mamlatdar.

5. Mr. Mehta, learned A.G.P. submitted that the petitioner has worked as a Talati only for a short duration of 48 days. He also submitted that the petitioner worked as Circle Inspector from 28.9.1948 to

18.4.1975 and thereafter as Circle Inspector till his retirement. Mr. Mehta, learned A.G.P. fairly stated that the petitioner has passed the sub-service examination conducted by the Revenue Department. He further submitted that as per the Rules, the petitioner is not entitled to promotion to the post of Deputy Mamlatdar.

6. On a minute reading of the impugned order at Annexure 'A', it is clear that the Collector has proceeded on the assumption that the petitioner has not passed the departmental examination, and therefore, as per recruitment Rules, he is not entitled to get promotion. Mr. Mehta, learned AGP submitted that there may be other considerations as well, which have compelled the Collector to take a decision not to give promotion to the petitioner. Suffice it to say that if there were any other considerations, the same ought to have been mentioned in the order passed by the Collector. If no other reasons are mentioned, it is to be presumed that the only ground on which the petitioner is denied promotion is that he has not passed the examination, and in the facts and circumstances of the case, the said reason cannot be considered as a just and proper reason to deny the benefit to the petitioner.

7. Sufficient time is granted to the State to file affidavit in reply, but till today, the State has not filed any return. Under the circumstances, there is no reason why the contentions raised by the petitioner be not accepted.

8. In the result, this petition stands allowed. It is directed that the respondents shall grant to petitioner deemed date of promotion to the post of Mamlatdar, fix his seniority accordingly and grant to him pension and consequential benefits available thereunder. It is clarified that the benefits so granted would only be notional.

Rule made absolute accordingly. No order as to costs.

csm./ -----